

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

4 - - - - - x

5 In the Matter of:

6
7 PURDUE PHARMA L.P.,

8
9 Debtor.

10 - - - - - x

11
12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15
16 December 16, 2021

17 10:06 AM

18
19
20
21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: UNKNOWN

1 HEARING re Notice of Agenda / Agenda for December 16, 2021
2 Hearing (ECF #4223)

3
4 HEARING re Objection /Motion to Object to Payments for all
5 parties and other relief filed by Ellen Isaacs. (ECF #3963)
6 Notice of Objection /Motion to Object to Payments for all
7 parties and other relief with hearing to be held on
8 12/16/2021 at 10:00 AM at Videoconference (ZoomGov) (RDD)
9 (related document(s)3963). (ECF #3964)

10

11 HEARING re Notice of Hearing Regarding Motion to Object to
12 Payments for all Parties and Other Relief Filed by Ellen
13 Isaacs (related document(s)3963) filed by James I. McClammy
14 on behalf of Purdue Pharma L.P.. with hearing to be held
15 on 12/16/2021 at 10:00 AM (ECF #3968).

16

17 HEARING re Objection / Debtors' Objection to Ellen Isaacs'
18 Motion to Object to Payments for all Parties and Other
19 Relief (related document(s)3963) filed by James I. McClammy
20 on behalf of Purdue Pharma L.P. (ECF #4212)

21

22 HEARING re Motion to File Proof of Claim After Claims Bar
23 Date filed by Robert P. Caulk with hearing to be held on
24 12/16/2021 at 10:00 AM at Videoconference (ZoomGov) (RDD
25 (ECF #4072)

1 HEARING re Objection / Debtors' Omnibus Objection to Motions
2 to File Proofs of Claim after Claims Bar Date Filed By
3 Robert Caulk and Lamere Wilmer-Williamson (related
4 document(s)4073, 4072) filed by James I. McClammy on
5 behalf of Purdue Pharma L.P. (ECF #4213)
6
7 HEARING re Motion to File Proof of Claim After Claims Bar
8 Date filed by Lamere Wilmer with hearing to be held on
9 12/16/2021 at 10:00 AM at Videoconference (ZoomGov)
10 (RDD)(ECF #4073)
11
12 HEARING re Objection / Debtors' Omnibus Objection to Motions
13 to File Proofs of Claim after Claims Bar Date Filed By
14 Robert Caulk and Lamere Wilmer-Williamson (related
15 document(s)4073, 4072) filed by James I. McClammy on
16 behalf of Purdue Pharma L.P. (ECF #4213)
17
18 HEARING re Notice of Hearing of Sixth Interim Fee filed by
19 Eli J. Vonnegut on behalf of Purdue Pharma L.P.. with
20 hearing to be held on 12/16/2021 at 10:00 AM at
21 Videoconference (ZoomGov) (RDD) Objections due by 12/9/2021
22 (ECF #4150)
23
24 HEARING re Application for Interim Professional Compensation
25 / Sixth Interim Fee Application of Dechert LLP, as 327(e)

1 Special Counsel, for Compensation for Professional Services
2 Rendered and Reimbursement of Actual and Necessary Expenses
3 Incurred During the Period June 1, 2021 Through September
4 30, 2021 for Dechert LLP, Debtor's Attorney, period:
5 6/1/2021 to 9/30/2021, fee:\$2,843,056.28, expenses:
6 \$20,560.42. filed by Dechert LLP.

7 (Vasser, Shmuel) (ECF #4117)

8

9 HEARING re Sixth Application for Interim Professional
10 Compensation for Arnold & Porter Kaye Scholer LLP, Debtor's
11 Attorney, period: 6/1/2021 to 9/30/2021, fee:\$849,323.89,
12 expenses: \$0.00. filed by Arnold & Porter Kaye
13 Scholer LLP. (Boccanfuso, Anthony) (ECF #4116)

14

15 HEARING re Application for Interim Professional Compensation
16 Sixth Interim Application of Davis Polk & Wardwell LLP for
17 Compensation for Services Rendered and Reimbursement of
18 Expenses Incurred as Counsel to the Debtors and
19 Debtors in Possession for the Period of June 1, 2021 Through
20 September 30, 2021 for Davis Polk & Wardwell
21 LLP, Debtor's Attorney, period: 6/1/2021 to 9/30/2021,
22 fee:\$38,805,548.0, expenses: \$433,221.43. filed by Davis
23 Polk & Wardwell LLP. (Attachments: # 1 Exhibit A -
24 Certification of Compliance with Fee Guidelines # 2
25 Exhibit B - Retention Order # 3 Exhibit C - Professional and

1 Paraprofessional Fees for Fee Period # 4 Exhibit D -
2 Fees by Project Category for Fee Period # 5 Exhibit E -
3 Budget and Staffing Plan for Fee Period # 6 Exhibit F -
4 Expense Summary # 7 Exhibit G - Customary and Comparable
5 Compensation Disclosures for the Fee Period)
6 (Huebner, Marshall) (ECF #4119)

7
8 HEARING re Application for Interim Professional Compensation
9 /Jones Day's Sixth Interim Application For Allowance of
10 Compensation For Services Rendered and Reimbursement of
11 Actual and Necessary Expenses Incurred During
12 Retention Period From June 1, 2021 Through September 30,
13 2021 for Jones Day, Special Counsel, period:
14 6/1/2021 to 9/30/2021, fee:\$1,151,574.20, expenses:
15 \$91,270.27. filed by Jones Day. (ECF #4123)

16
17 HEARING re Application for Interim Professional Compensation
18 / Sixth Joint Interim Fee Application of KPMG LLP as Tax
19 Consultant to the Debtors and the Official Committee of
20 Unsecured Creditors for Allowance of Compensation for
21 Services Rendered and Reimbursement of Expenses for the
22 Period from June 1, 2021 through September 30, 2021
23 for Purdue Pharma L.P., Consultant, period: 6/1/2021 to
24 9/30/2021, fee:\$24,223.10, expenses: \$0.00. filed by
25 Purdue Pharma L.P. (ECF #3995)

1 HEARING re Application for Interim Professional Compensation
2 / Sixth Interim Fee Application of Ernst & Young LLP for
3 Compensation and Reimbursement of Expenses Incurred as
4 Auditors and Providers of Other Professional
5 Services for the Debtors for the Period from June 1, 2021
6 Through September 30, 2021 for Ernst & Young LLP,
7 Auditor, period: 6/1/2021 to 9/30/2021, fee:\$58000.00,
8 expenses: \$1177.50. filed by Ernst & Young LLP.
9 (ECF #4114)

10

11 HEARING re Application for Interim Professional Compensation
12 / Sixth Interim Fee Application of AlixPartners, LLP
13 Financial Advisor for the Chapter 11 Debtors, for Allowance
14 of Compensation for Professional Services
15 Rendered and Reimbursement of Expenses for the Period June
16 1, 2021 Through September 30, 2021 for
17 AlixPartners, LLP, Other Professional, period: 6/1/2021 to
18 9/30/2021, fee:\$4,009,435.00, expenses: \$194,217.02.
19 filed by AlixPartners, LLP. (Attachments: # 1 Exhibit A -
20 Detailed Description of AlixPartners' Fees and Hours
21 by Matter Category During the Sixth Interim Period # 2
22 Exhibit B - Summary and Detailed Description of
23 AlixPartners' Expenses During Sixth Interim Period # 3
24 Exhibit C - Certification of Lisa Donahue) (ECF #4120)

25

1 HEARING re Third Application for Interim Professional
2 Compensation of Prime Clerk LLC, as Administrative Advisor
3 to the Debtors, for Services Rendered and Reimbursement of
4 Expenses for the Period from June 1, 2021 through
5 September 30, 2021 for Prime Clerk LLC, Other Professional,
6 period: 7/1/2021 to 9/30/2021, fee:\$623646.43,
7 expenses: \$273.50. filed by Prime Clerk LLC. (ECF #4115)
8
9 HEARING re Sixth Application for Interim Professional
10 Compensation Sixth Interim Fee Application Of Skadden, Arps,
11 Slate, Meagher & Flom LLP For Compensation For Services
12 Rendered And Reimbursement Of Expenses As Special
13 Counsel To The Debtors For The Period From June 1, 2021
14 Through And Including September 30, 2021 for Skadden, Arps,
15 Slate, Meagher & Flom LLP, Debtor's Attorney, period:
16 6/1/2021 to 9/30/2021, fee:\$3,436,000.65, expenses:
17 \$126,312.25. filed by Skadden, Arps, Slate, Meagher & Flom
18 LLP. (ECF #4141)
19
20 HEARING re Application for Interim Professional Compensation
21 / Sixth Interim Application of Kramer Levin Naftalis &
22 Frankel LLP, as Co-Counsel to the Ad Hoc Committee of
23 Governmental and Other Contingent Litigation
24 Claimants, for Allowance of Compensation for Professional
25 Services Rendered and for Reimbursement of Actual

1 and Necessary Expenses Incurred for the Period from June 1,
2 2021 through September 30, 2021 for Kramer Levin
3 Naftalis & Frankel LLP, Other Professional, period: 6/1/2021
4 to 9/30/2021, fee:\$5,651,625.50, expenses: \$61,624.84. filed
5 by Kramer Levin Naftalis & Frankel LLP. (ECF #4142)

6
7 HEARING re Application for Interim Professional Compensation
8 / Sixth Interim Fee Application of PJT Partners LP as
9 Investment Banker to the Debtors and Debtors-In-Possession
10 for Allowance of Compensation for Services Rendered and for
11 the Reimbursement of All Actual and Necessary Expenses
12 Incurred for the Period of June 1, 2021 for PJT Partners LP,
13 Other Professional, period: 6/1/2021 to 9/30/2021,
14 fee:\$900,000.00, expenses: \$3,567.77. filed by PJT Partners
15 LP. (Attachments: # 1 Appendix A # 2 Appendix B # 3 Appendix
16 C) (ECF #4124)

17
18 HEARING re Application for Interim Professional Compensation
19 / Fifth Interim Application of Cornerstone Research for
20 Compensation for Services Rendered and Reimbursement of
21 Expenses Incurred as Consultant to the Debtors for
22 the Period from June 1, 2021 Through September 30, 2021 for
23 Cornerstone Research, Consultant, period:
24 6/1/2021 to 9/30/2021, fee:\$443,116.50, expenses: \$40.20.
25 filed by Cornerstone Research. (Attachments: # 1

1 Exhibit A - Certification of Compliance with Fee Guidelines
2 # 2 Exhibit B - Retention Order # 3 Exhibit C -
3 Professional and Paraprofessional Fees for Fee Period # 4
4 Exhibit D - Fes by Category for Fee Period # 5 Exhibit
5 E - Staffing Plan for Fee Period # 6 Exhibit F - Expense
6 Summary # 7 Exhibit G - Customary and Comparable
7 Compensation Disclosures for the Fee Period) (ECF #4122)
8 First Application for Interim Professional Compensation for
9 Jeffrey R. Gleit, Special Counsel, period: 8/1/2021 to
10 9/30/2021, fee:\$467761.50, expenses: \$285.95. filed by
11 Jeffrey R. Gleit. (ECF #4113)
12
13 HEARING re Application for Interim Professional Compensation
14 / First Interim Fee Application of Grant Thornton LLP for
15 Allowance of: (I) Compensation and Reimbursement of Expenses
16 Incurred for Retention as Consultants to Debtors for
17 Services Related to the Plan for the Period January 20, 2021
18 to September 30, 2021; and (II) Payments for Services
19 Performed in the Ordinary Course of Debtors' Business
20 Through September 30, 2021 for Grant Thornton LLP,
21 Consultant, period: 1/20/2021 to 9/30/2021, fee:\$192,710.50,
22 expenses: \$34,703.49. filed by Grant Thornton LLP.
23 (Attachments: # 1 Exhibit A - Certification of Raymond Werth
24 # 2 Exhibit B - Initial Retention Order and the Supplemental
25 Retention Order # 3 Exhibit C - Summary of Hourly Plan

1 Services by Professional # 4 Exhibit D - Summary of Plan
2 Services by Category # 5 Exhibit Detailed Time Entries for
3 Plan Services by Category # 6 Exhibit F - Staffing Plan # 7
4 Exhibit G - Summary of Out of Pocket Expenses and
5 Supporting Invoices # 8 Exhibit H - Customary Comparable
6 Compensation Disclosures for the Fee Period # 9
7 Exhibit I - Summary and Supporting Invoices for OCB Tax
8 Services) (ECF #4121)

9
10 HEARING re Sixth Application for Interim Professional
11 Compensation /Sixth Interim Fee Application of Brown Rudnick
12 LLP as Co-Counsel to the Ad Hoc Committee of Governmental
13 and Other Contingent Litigation Claimants for
14 Services and Reimbursement of Expenses Incurred for the
15 Period of June 1, 2021 through September 30, 2021
16 (Attachments: Exhibit A-F) for Brown Rudnick LLP, Other
17 Professional, period: 6/1/2021 to 9/30/2021,
18 fee:\$3,325,679.50, expenses: \$12,918.34. filed by Brown
19 Rudnick LLP. (ECF #4126)

20
21 HEARING re Application for Interim Professional Compensation
22 / Sixth Interim Fee Application of FTI Consulting, Inc. for
23 Compensation Earned and Expenses Incurred for the Period
24 from June 1, 2021 through September 30, 2021 for
25 FTI Consulting, Inc., Other Professional, period: 6/1/2021

1 to 9/30/2021, fee:\$1,264,175.50, expenses: \$156.75.

2 filed by FTI Consulting, Inc. (ECF #4129)

3

4 HEARING re Application for Interim Professional Compensation
5 / Application of Otterbourg P.C. as Co-Counsel to the Ad Hoc
6 Committee of Governmental and Other Contingent Claimants for
7 Sixth Interim Allowance of Compensation for Services

8 Rendered and Reimbursement of Expenses Incurred from June 1,
9 2021 Through and Including September 30, 2021 for Otterbourg
10 P.C., Other Professional, period: 6/1/2021 to 9/30/2021,

11 fee:\$601,312.00, expenses: \$47.49. filed by Otterbourg P.C.

12 (ECF #4127)

13

14 HEARING re Application for Interim Professional Compensation
15 / Sixth Interim Application for Allowance of Compensation
16 for Services Rendered and Reimbursement of Expenses Incurred
17 by Gilbert LLP as Co-Counsel to the Ad Hoc Committee of
18 Governmental and Other Contingent Litigation Claimants for
19 the Period June 1, 2021 through September 30, 2021 for

20 Gilbert LLP, Other Professional, period: 6/1/2021 to

21 9/30/2021, fee:\$2,766,720.00, expenses: \$56,440.83. filed by

22 Gilbert LLP. (ECF #4128)

23

24 HEARING re Application for Interim Professional Compensation
25 / Sixth Interim Application of Kramer Levin Naftalis &

1 Frankel LLP, as Co-Counsel to the Ad Hoc Committee of
2 Governmental and Other Contingent Litigation Claimants, for
3 Allowance of Compensation for Professional Services Rendered
4 and for Reimbursement of Actual and Necessary Expenses
5 Incurred for the Period from June 1, 2021 through September
6 30, 2021 for Kramer Levin Naftalis & Frankel LLP, Other
7 Professional, period: 6/1/2021 to 9/30/2021,
8 fee:\$5,651,625.50, expenses: \$61,624.84. filed by Kramer
9 Levin Naftalis & Frankel LLP. (ECF #4142)

10
11 HEARING re Application for Interim Professional Compensation
12 / Fifth Interim Fee Application of Houlihan Lokey Capital,
13 Inc., Investment Banker and Co-Financial Advisor to the Ad
14 Hoc Committee, for Compensation and
15 Reimbursement of Expenses for the Period from June 1, 2021
16 through September 30, 2021 for Houlihan Lokey
17 Capital, Inc., Other Professional, period: 6/1/2021 to
18 9/30/2021, fee:\$800,000.00, expenses: \$3,223.71. filed by
19 Houlihan Lokey Capital, Inc. (ECF #4132)

20
21 HEARING re Interim Application for Interim Professional
22 Compensation / Second Interim Application of Caplin &
23 Drysdale, Chartered, for Allowance of Compensation and
24 Reimbursement of Expenses With Respect to Services Rendered
25 as Counsel to the Multi-State Governmental Entities Group

1 for the Period Commencing June 1, 2021, through
2 September 30, 2021 for Multi-State Governmental Entities
3 Group, Other Professional, period: 6/1/2021 to
4 9/30/2021, fee:\$1,709,854.00, expenses: \$26,355.44. filed by
5 Multi-State Governmental Entities Group. (Maclay,
6 Kevin) (ECF #4145)

7
8 HEARING re Fifth Application for Interim Professional
9 Compensation -- Fifth Interim Application of Bielli &
10 Klauder, LLC for Compensation for Services Rendered and
11 Reimbursement of Expenses Incurred as Counsel to the Fee
12 Examiner, David M. Klauder, Esquire, for the Period from
13 June 1, 2021 through September 30, 2021 -- for Bielli
14 & Klauder, LLC, Other Professional, period: 6/1/2021 to
15 9/30/2021, fee:\$220,000.00, expenses: \$. filed by Bielli
16 & Klauder, LLC. (Bielli, Thomas) (ECF #4118)

17
18 HEARING re Application for Interim Professional Compensation
19 as an Ordinary Course Professional for Compensation for
20 Services Rendered in Excess of the Tier 1 OCP Cap for Reed
21 Smith LLP, Other Professional, period: 5/1/2021 to
22 8/31/2021, fee:\$485,527.25, expenses: \$0.00. filed by Reed
23 Smith LLP. (Attachments: # 1 Exhibit A # 2 Exhibit
24 B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) (Breene, Paul)
25 (ECF #4090)

1 HEARING re Notice of Hearing on the Application of Reed
2 Smith LLP as an Ordinary Course Professional for
3 Compensation for Services Rendered in Excess of the Tier 1
4 OCP CAP for the Period from May 1, 2021 through August 31,
5 2021 (related document(s)4090) filed by Paul E. Breene on
6 behalf of Reed Smith LLP. (ECF #4091)

7
8 HEARING re Certificate of No Objection Pursuant to LR 9075-2
9 CERTIFICATE OF NO OBJECTION UNDER 28 U.S.C. § 1746 REGARDING
10 THE APPLICATION OF REED SMITH LLP AS AN ORDINARY COURSE
11 PROFESSIONAL FOR COMPENSATION FOR SERVICES RENDERED IN
12 EXCESS OF THE TIER 1 OCP CAP FOR THE PERIOD FROM MAY 1,2021
13 THROUGH AUGUST 31, 2021 (related document(s)4090) Filed
14 by Paul E. Breene on behalf of Purdue Pharma L.P.
15 (ECF #4218)

16
17
18
19
20
21
22
23
24
25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 DAVIS POLK & WARDWELL LLP

4 Attorneys for the Debtor

5 450 Lexington Avenue

6 New York, NY 10017

7

8 BY: MARSHALL S. HUEBNER (TELEPHONICALLY)

9 JACQUELYN SWANNER KNUDSON (TELEPHONICALLY)

10

11 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

12 Attorneys for Skadden Arps Slate Meagher Flom LLP

13 4 Times Square

14 New York, NY 10036

15

16 BY: ANTHONY W. CLARK (TELEPHONICALLY)

17

18 ALSO PRESENT TELEPHONICALLY:

19

20 JUSTIN R. ALBERTO

21 ROXANA ALEALI

22 ANDREW VINCENT ALFANO

23 MICHAEL ATKINSON

24 JASMINE BALL

25 BROOKS BARKER

1 KATHRYN BENEDICT
2 THOMAS D. BIELLI
3 SHEILA BIRNBAUM
4 DAVID E. BLABEY
5 SARA BRAUNER
6 GABRIEL BRUNSWICK
7 GERARD CICERO
8 ANTHONY W. CLARK
9 HAYDEN COLEMAN
10 DYLAN CONSLA
11 MARIO D'ANGELO
12 SCOTT DAVISON
13 KEVIN DAVIS
14 JESSE DELACONTE
15 CLINT DOCKEN
16 MARIA ECKE
17 KENNETH H. ECKSTEIN
18 BRIAN EDMUNDS
19 BERNARD ARDAVAN ESKANDARI
20 MATTHEW FARRELL
21 JENNIFER S. FEENEY
22 LAWRENCE FOGELMAN
23 CAROLINE GANGE
24 MAGALI GIDDENS
25 JEFFREY R. GLEIT

1 SARAH HARBUCK
2 MITCHELL HURLEY
3 ELLEN ISAACS
4 HAROLD D. ISRAEL
5 EVAN M. JONES
6 GREGORY JOSEPH
7 BENJAMIN S. KAMINETZKY
8 MARC KESSELMAN
9 DAVID KLAUDER
10 DARREN S. KLEIN
11 ANNA KORDAS
12 ANN KRAMER
13 IAN S. LANDSBERG
14 ANN LANGLEY
15 ALEXANDER LEES
16 MARA LEVENTHAL
17 JEFFREY LIESEMER
18 KEVIN MACLAY
19 GERARD MCCARTHY
20 JAMES I. MCCLAMMY
21 SHANNON M. MCNULTY
22 NATHANIEL MILLER
23 MAURA KATHLEEN MONAGHAN
24 AISLING MURRAY
25 ENRIQUE NIEVES

1 MICHAEL PATRICK O'NEIL
2 SUSAN OUSTERMAN
3 STEVEN POHL
4 ARIK PREIS
5 KAMI ELIZABETH QUINN
6 LINDA RIFFKIN
7 RACHAEL RINGER
8 CHRISTOPHER ROBERTSON
9 JEFFREY J. ROSEN
10 HEATHER SAYDAH
11 ELIZABETH SCHLECKER
12 PAUL KENAN SCHWARTZBERG
13 LUCAS H. SELF
14 J. CHRISTOPHER SHORE
15 MARC F. SKAPOF
16 LAURA SMITH
17 KATE SOMERS
18 ROBIN SPIGEL
19 ETHAN STERN
20 ERIC STODOLA
21 MARC JOSEPH TOBAK
22 ESTHER TOWNES
23 ALICE TSIER
24 ALLEN J. UNDERWOOD
25 GERARD UZZI

1 SHMUEL VASSER
2 MICHAEL J. VENDITTO
3 ELI J. VONNEGUT
4 JORDAN A. WEBER
5 JAMES P. WEHNER
6 ALLISON H. WEISS
7 THEODORE WELLS
8 IRVE GOLDMAN
9 RICHARD ARCHER
10 TZERINA DIZON
11 LOWELL W. FINSON
12 MICHAEL D. GOFORTH
13 UDAY GORREPATI
14 BRIAN HANSEN
15 M. NATASHA LABOVITZ
16 KAREN LEUNG
17 SIDNEY P. LEVINSON
18 MICHELE MEISES
19 MARCIA R. MEOLI
20 NICHOLAS PREY
21 JACOB W. STAHL
22 VINCE SULLIVAN
23 WENDY WEINBERG
24 KATIE M. WHITE
25 MARY JO WHITE

1 HAROLD WILLIFORD

2 CARTER YOUNG

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 THE COURT: Okay. Good morning. This is Judge
3 Drain. We're here in In Re Purdue Pharma LP et al. on a
4 regular monthly omnibus calendar.

5 I have the agenda for today's hearing submitted
6 and filed by counsel for the Debtors and I'm prepared to go
7 down that agenda in order.

8 MR. HUEBNER: Thank you very much, Your Honor.
9 Can I be heard clearly?

10 THE COURT: Yes.

11 MR. HUEBNER: Okay. For the record, Your Honor,
12 Marshall Huebner on behalf of the Debtors.

13 There are three contested matters that we put on.
14 The first will be handled in just a moment by my colleague
15 Jacquelyn Knudson. There are obviously uncontested matters
16 and I'll be reporting when we get to that, but resolutions
17 have been reached with the fee examiner on every single
18 application, which hopefully will be very good news to the
19 Court. One other just precatory note, as the Court may or
20 may not be aware, in a ruling that Judge McMahon handed down
21 on a subsidiary issue raised on appeal last week, she did
22 indicate that her decision would be forthcoming this week.
23 So given that it is Thursday, we, of course, have no idea
24 what the content of that decision will be and the timing
25 could change, there is at least a nontrivial possibility or

1 more that decision will be handed down either today or
2 tomorrow. And obviously, we will have to figure out where
3 we go from there based on that ruling.

4 We don't really have anything else in the way of
5 sort of an omnibus or status report. So unless the Court
6 has questions for me, I will turn the virtual podium over to
7 Ms. Knudson.

8 THE COURT: Okay, very well. Thank you.

9 MS. KNUDSON: Good morning, Your Honor. For the
10 record, Jacquelyn Knudson of Davis Polk and Wardell on
11 behalf of the Debtors. Can I be heard clearly?

12 THE COURT: Yes.

13 MS. KNUDSON: Thank you, Your Honor. So the first
14 item on the agenda is Ms. Isaacs motion to object -- motion
15 to object to payments for all parties and other relief,
16 which is at Docket No. 3963. I will turn the podium over to
17 Ms. Isaacs. I believe she is on, if she would like to be
18 heard first as the movant.

19 THE COURT: Okay. I have reviewed this motion and
20 the Debtors objection to it. I actually don't need oral
21 argument on the motion. The motion seeks relief that has
22 already been sought at least once, and in some cases twice,
23 from this Court. Moreover, most, if not all, of the relief
24 sought goes to issues that are presently on appeal,
25 including an appeal by the movant here, Ms. Isaacs. To the

1 extent that the motion seeks relief from prior -- those
2 prior orders of the Court, the first of which was entered on
3 September 15, 2021, and the second of which was entered on
4 November 22, 2021, the motion requests relief under either
5 Bankruptcy Rule 9023, incorporating Federal Rule of Civil
6 Procedure 59, or Bankruptcy Rule 9024, incorporating Federal
7 Rule of Civil Procedure 60(b).

8 The Court, by Local Rule 9023-1 and 9023 -- I'm
9 sorry, 9023-1, would only hear oral argument if the Court
10 specifically orders that the matter be reargued orally. See
11 also In Re Terrestar -- T-E-R-R-E-S-T-A-R -- Corporation,
12 2016 WL 197621, Bankruptcy SDNY January 15, 2016. Those
13 prior orders as I noted quite clearly, especially the
14 November, 22, 2021 order, dealt with requests for
15 essentially the same relief sought in this motion, which was
16 filed October 13, 2021 which Ms. Isaacs objects to any and
17 all payments or compensation to anyone in these proceedings
18 until the claimants and all victims across the nation
19 receive proper due process, reasonable and just compensation
20 for the wrongful deaths and effective financial compensation
21 to provide adequate mental and physical health care services
22 life. That's the caption of the motion.

23 The motion seeks seven forms of relief which were
24 also sought in the motion filed October 1, 2021, dated
25 September 30, 2021, that I dealt with in the November 22,

1 2021 order denying that motion. And much of the same
2 relief, as far as an injunction of all payments and all
3 activity in the case was sought, in addition in Ms. Isaacs
4 motion for an immediate injunction and hearing for due
5 process, production, and evidentiary documents and other
6 relief dated August 16, 2021, and filed August 17, 2021,
7 which I denied in an order dated September 15, 2021. I've
8 already given the reasons for those denials in prior bench
9 rulings and the motion here does not satisfy the
10 requirements of either Rule 59 or Rule 60 for relief from
11 those orders to the extent that I'm not divested of
12 jurisdiction by the pending appeal of the confirmation
13 order.

14 The burden of proof on a movant for relief under
15 Rules 59 or 60 is exceptional in that such relief is viewed
16 as extraordinary relief and not a substitute for an appeal.
17 See, for example, US v. International Brotherhood of
18 Teamsters, 247 F.3d. 370, 391 (2d Cir. 2001) and Nemaizer -
19 N-E-M-A-I-Z-E-R - v. Baker, 793 F.2d 58, 61, (2d Cir. 1986).

20 The Rule 59 motion to the extent -- I'm treating
21 as a Rule 59 motion, and again, Ms. Isaacs is pro se, so it
22 doesn't actually specify in the motion the basis, the legal
23 basis for the relief under Rule 59, but I couched it
24 potentially as one -- did not point to controlling decisions
25 or data that the Court overlooked in its prior rulings. See

1 In Re Kirwan Offices S.A.R.L., 792 Fed Appx 99, 104 (2d Cir.
2 2019) citing Tonga -- I'm sorry -- Analytical Survey, Inc.
3 v. Tonga Partners, LP, 684 F.3d 36, 52 (2d Cir. 2012),
4 including not only for that proposition but also for the
5 proposition that a motion for reconsideration is not a
6 vehicle for presenting the Court -- or presenting the case
7 under new theories or otherwise taking a second bite at the
8 apple.

9 Similarly, the motion does not satisfy any of the
10 six enumerated grounds for relief under Rule 60 of the
11 Federal Rules of Civil Procedure, again not citing any newly
12 discovered evidence and really seeking to reargue points
13 that the Court already considered. See generally In Re
14 Terrestar Corp, 2016 WL 19762 (Bankruptcy SDNY January 15,
15 2016).

16 Again, I'm ruling on the papers here because the
17 papers are clear on these points and I've already dealt with
18 these matters. And as I noted, under the local rules, a
19 hearing should be scheduled for oral argument on this only
20 if the Court so directs and I didn't direct this. It's
21 possible the clerk's office put it on the agenda not
22 understanding the nature of these motions. But in any
23 event, a hearing is not necessary. Again, see In Re
24 Prudential Lines, Inc., 170 BR 222 (Bankruptcy SDNY 1994)
25 and Local Rule 9023-1.

1 Moreover, as I noted, as set forth in the
2 Prudential Lines case, it's well established that a pending
3 appeal divests the lower court of its control over matters
4 on the appeal, 170 BR at 243 and the case is cited therein
5 including Marrese v. American Academy of Orthopedic
6 Surgeons, 470 US 373 (1985). This is also clear under
7 Bankruptcy Rule 8008 and 8007, which the latter rule
8 pertains to requests for stays pending appeal.

9 At this point, the Court already having ruled on
10 requests for stay pending appeal and the District Court also
11 having ruled, if there is to be any further stay, and one
12 can read this motion as requesting a stay as set forth in
13 the initial paragraphs of the motion, that should be
14 determined by the District Court on proper motion to the
15 District Court, presumably if the District Court does not
16 reverse or remand the appeal presently before it.

17 So I'll ask the Debtors to submit an order denying
18 the motion of those two alternative grounds.

19 MS. ISAACS: Your Honor, may I ask a question
20 please?

21 THE COURT: Sure.

22 MS. ISAACS: If I haven't met the heavy burden of
23 proof to save humanity, what else is there?

24 THE COURT: I can't begin to answer that question,
25 Ms. Issacs, other than pointing to the law that I've already

1 cited to.

2 MS. ISAACS: Then I have a second question.

3 THE COURT: You have that -- Ms. Isaacs, you have
4 that issue on appeal and I can't, under the procedural and
5 jurisdictional limitations, given that you have issue on
6 appeal, decide it. It's on appeal. I've also ruled on the
7 aspects of your motion that arguably don't cover the plan
8 that's on appeal. So --

9 MS. ISAACS: So then I have a second question,
10 Your Honor. This is outside the scope of anything we've
11 ever seen in all of humanity and there are no laws that can
12 govern what's going on. So where does anybody turn from
13 there because no attorney or attorney general knows what to
14 do in this matter.

15 THE COURT: Well, I think they would differ with
16 you, ma'am and we'll leave it at that. And if you don't
17 believe the laws apply, then I don't know why you're filing
18 in court.

19 MS. ISAACS: Because justice needs to be served,
20 Your Honor.

21 THE COURT: All right, very well. I'm going to
22 move onto the next two matters on the agenda, both of which
23 seek leaves to file proofs of claim after the bar date that
24 was established in this case.

25 The first is a motion by Robert Caulk, C-A-U-L-K.

1 And the second is a motion by Lamere Wilmer-Williamson. The
2 Debtors objected to both of those motions in a joint
3 objection, which I have reviewed, as well as, of course, the
4 two motions.

5 I don't know, is either Mr. Caulk or Lamere
6 Wilmer-Williamson on the phone? Okay. Ms. Knudson, have
7 there been any further developments on these motions?

8 MS. KNUDSON: No, Your Honor, there is not. We
9 did, on December 2nd, send out letters to both of the
10 movants requesting additional information because as of now,
11 we do not think with the information provided that they have
12 met the excusable neglect standards set forth in Bankruptcy
13 Rule 9006 and the so-called Pioneer Factors. We have not
14 received responses from the movants and they have not
15 provided additional information.

16 Because of that, we request the Court to deny the
17 motions without prejudice so that the movants can properly
18 submit evidence describing the reason for the delay and
19 demonstrating that timely filing of claim was outside of
20 their control. As Your Honor is aware, that is the most
21 important factor, most important Pioneer factor, that being
22 the reason for the delay. And in the short motions provided
23 by both of the movants, neither of them have provided any
24 reason why they could not timely file a proof of claim.

25 The Debtors do acknowledge that both of the

1 movants are incarcerated, however, their papers do not state
2 they were incarcerated prior to the July 30, 2020 bar date.
3 Nor do they allege that their incarceration prevented them
4 from timely filing a proof of claim.

5 The other thing that we would note, Your Honor, is
6 that the delay here has been substantial with the motion
7 filed over 15 months after the bar date and over six weeks
8 after this Court confirmed the Debtor's plan.

9 So with respect to the request to file late
10 claims, we would request the Court deny the motions without
11 prejudice.

12 Mr. Caulk's motion, as I'm sure you know, also
13 requested additional relief and that relief being that we
14 provide additional notice to incarcerated individuals that
15 can demonstrate opioid addiction. We believe this request
16 should also be denied. The motion provided -- the notice
17 provided in these cases has been extraordinary. Moreover,
18 as the Debtors have shown, we have been willing to consider
19 and allow late claims based on individualized assertions and
20 the Debtors' Plan provides mechanisms to do the same. So
21 with respect to that relief, we would request that be denied
22 as well.

23 THE COURT: Okay. I'm sorry. You said that
24 letter was sent to each of the movants on December 2nd or
25 3rd? I want to make sure I heard that correctly.

1 MS. KNUDSON: Yes, Your Honor, December 2nd.

2 THE COURT: Okay. And how did they get notice of
3 today's hearing?

4 MS. KNUDSON: In that same letter, we let them
5 know their motions would be heard on December 16th at 10
6 a.m.

7 THE COURT: Okay. All right. Okay, I, as I've
8 said, have two motions before me for leave to file a claim
9 late after the July 30, 2020, bar date set in this case for
10 filing claims, each of which has been objected to by the
11 Debtors, although the Debtors' objection states that the
12 Debtors are amenable to receiving additional information
13 regarding the circumstances behind the late filing of both
14 claims.

15 The first motion on the calendar is a motion by
16 Robert Caulk, C-A-U-L-K, and the second is a motion by
17 Lamere Wilmer-Williamson. Both movants are pro se and both
18 motions, which are in the same handwriting, are dated
19 October 31, 2021, well over a year after the bar date was
20 set in these cases, again, that bar date being July 30,
21 2020.

22 I will also note that the Court entered an order
23 confirming the Chapter 11 Plan in these cases on September
24 17, 2021, approximately six weeks before both of these
25 motions were made.

1 Each motion states that the movant is incarcerated
2 and each motion states that the claimant believes that the
3 claimant has a claim based on the addictive nature of the
4 Debtors' product, which I'm assuming refers to Oxy-Contin
5 and the growing science establishing toxicity of that
6 product.

7 Mr. Caulk's motion also makes a general request to
8 extend notice, additional notice to people who are
9 incarcerated. Importantly, neither motion states a specific
10 set of facts as to why the movant would not have been able
11 to file a timely request or a motion earlier than October
12 31, such as, for example, the unusual lockdowns that
13 occurred during the COVID epidemic at times that would
14 prevent people who are incarcerated from obtaining mailed
15 notices or being in common areas to see broadcasts or listen
16 to broadcasts, which is an important omission and as the
17 Debtors' objection points out, distinguishes these motions
18 from prior motions that the Court has granted largely in
19 number by those who were incarcerated, but which showed that
20 they had not, during the period when there was notice of the
21 bar date, been able to obtain such notice.

22 The burden of proof in a motion like these, which
23 are governed by Bankruptcy Rule 9006(b)(1) which provides
24 for an extension of the deadline to file a proof of claim if
25 the familiar to submit the claim timely was due to excusable

1 neglect and the Supreme Court's case, Pioneer Investment
2 Services Company v. Brunswick Associates Limited
3 Partnership, 507 US 380 (1993), which interpreted that rule
4 and the term "excusable neglect" and provided factors for
5 the Court to analyze on a case-by-base basis. See also
6 Midland Cogeneration Venture, LP v. Enron Corp (In Re Enron
7 Corp) 419 F.3d 115, 121 (2d Cir. 2005) as to the burden of
8 proof.

9 Before turning to an analysis of those factors,
10 it's important to note that as recently stated by the Third
11 Circuit "dates matter in bankruptcy. For Creditors, none is
12 more important than the bar date, a deadline set by the
13 bankruptcy court for them to file claims against or request
14 for payment from the debtor. The bar date interacts with
15 the Chapter 11 Plan of reorganization., LS v. Westinghouse
16 Electric Company, 11 F.4th 221, 226 (3d Cir. 2021).

17 Thus the bar date serves the important purpose of
18 enabling the parties and interests to ascertain with
19 reasonable promptness the identity of those making claims
20 against the estate and the general amount of the claims, a
21 necessary step in achieving the goal of successful
22 reorganization, In Re Calpine Corp, 2007 US District Lexis
23 86514, Pages 14 through 15 (SDNY November 21, 2007). See
24 also In Re Asia Global Crossing Limited, 324 BR 503, 508,
25 (Bankruptcy SDNY 2005).

1 Allowing late final claims, especially after a
2 Debtors' Plan is confirmed, subjects the Debtor to prejudice
3 because -- to additional prejudice because it would have to
4 renegotiate any settlements reached in contemplation of the
5 known claims against the estate, In Re Drexel Burnham
6 Lambert Group, Inc., 148 BR 1002, 1008-10 (Bankruptcy SDNY
7 1993).

8 The Supreme Court in the Pioneer case that I
9 previously cited developed a two-step test for determining
10 whether a claim filed after the bar date was due to
11 excusable neglect and, therefore, should be recognized by
12 the Court. First the movant must show that its failure to
13 file a timely claim constituted neglect as opposed to
14 willfulness or a knowing omission. Neglect generally being
15 attributed to a movant's inadvertent mistake or
16 carelessness, 507 US, 387-88. After establishing neglect,
17 the Court needs to decide whether that neglect was
18 excusable. That analysis is to be undertaken on a case-by-
19 case basis that is based on the particular facts of the
20 case, although the Court is to be guided by and make the
21 determination balancing the following factors: 1) the danger
22 of prejudice to the Debtor, 2) the length of the delay and
23 whether or not it would impact the case, 3) the reason for
24 the delay, in particular, whether the delay was within the
25 control of the movant, and 4) whether the movant acted in

1 good faith. ID at 395.

2 However, inadvertence, ignorance of the rules or
3 mistakes construing the rules do not usually constitute
4 excusable neglect, In Re Enron Corp 419 F.3d 126.

5 In that decision, the court stated -- that is the
6 Second Circuit stated -- we have taken a hard line in
7 applying the Pioneer test. In a typical case, three of the
8 Pioneer factors: the length of the delay, the danger of
9 prejudice, and the movant's good faith, usually weigh in
10 favor of the party seeking the extension. We noted, though,
11 that we and other circuits have focused on the third factor,
12 the reason for the delay, including whether it was within
13 the reasonable control of the movant. And we caution that
14 the equities will rarely, if ever, favor a party who fails
15 to follow the clear dictates of the court rule and that
16 where the rule is entirely clear, we continue to expect that
17 a party claiming excusable neglect will, in the ordinary
18 course, lose under the Pioneer test, ID at 366-67, internal
19 quotations and citations omitted. See also In Re DPH
20 Holdings Corp, 434 BR 77, 82 (SDNY 2010) and In Re Musicland
21 Holding Corp, 2006 Bankruptcy Lexis 3315 at Pages 10-11,
22 (Bankruptcy SDNY 2006).

23 Here, as I've noted, the reason for the delay is
24 not detailed here and the inference that I'm being asked to
25 make by these pleadings that the mere incarceration of these

1 two movants is enough of a reason for their delay is too
2 much of a stretch given the extensive notice that was
3 provided and the fact that many incarcerated people did, in
4 fact, file proofs of claim in this case. More factual
5 background would need to be submitted to establish that the
6 reason for the delay was not within the reasonable control
7 of either of the movants.

8 Here, also, the delay is quite lengthy. The
9 courts have generally recognized that delay between the bar
10 date and the filing of the claim or the motion in excess of
11 a year is significant. See, for example, *In Re Enron*
12 *Creditors Recovery Corp*, 370 BR 90, 103 (Bankruptcy SDNY
13 2007), which was a 15-month delay, similar to this one and
14 *In Re Cable & Wireless USA, Inc.*, 338 BR 609, 616,
15 (Bankruptcy D. Delaware 2006), where a one-year delay was
16 significant.

17 Moreover, if one permitted simply the fact of
18 incarceration to justify the late filing of a claim, I
19 believe that would, in fact, open the door to too great a
20 number of other claims being filed late, a factor that
21 courts have often cited as establishing prejudice against
22 the debtor and the creditors who have relied on the bar date
23 to flag the claims against the estate, see, again, *In Re DPH*
24 *Holdings*, 434, BR at 82 and *In Re Lehman Brothers Holding*
25 *Inc.*, 433 BR 113, 120-21 (Bankruptcy SDNY 2014).

1 Finally, as I noted, these motions were filed six
2 weeks after the order confirming the Debtors' Plan was
3 entered. And that fact also is important here as I
4 previously noted, allowing claims after the plan was filed
5 would be additional prejudice given that the plan was
6 negotiated and confirmed in large part on an assumption
7 regarding the allowable claims against the Debtor's estate
8 in addition to In Re Drexel Burnham Lambert Group Inc,
9 which I previously cited, 148 BR, 1008-10, see In Re Enron
10 Corp, 419 F.3d at 128, and DPH Holdings 434 BR at 82.

11 So, for those reasons, I'll deny both motions'
12 request to file the claim late. I'm not going to
13 specifically say it's denied without prejudice, however, the
14 movants can seek relief from this order base on new facts
15 if, for some reason, such relief is warranted under Rule 59
16 or Rule 60.

17 That leaves me to the portion of the motion that
18 seeks additional notice for incarcerated people. The Court,
19 as I noted, entered the bar date order in the late spring of
20 2020. It provided for extensive, in fact, unprecedented
21 notice, including procedures specifically geared to reach
22 incarcerated people. It has obviously been more than a year
23 since that ordered was entered, so I should consider this
24 request in the motion as a request for relieve under Federal
25 Rule of Civil Procedure 60(b), but it doesn't satisfy the

1 test for such relief, which is extraordinary relief, that
2 the motion fails to set forth facts in its support in
3 establishing any of the factors laid out in 60(b), i.e.
4 mistake and inadvertent surprise, or excusable neglect,
5 newly discovered evidence that with reasonable diligence
6 could not have been discovered in time to move for a new
7 trial, fraud, misrepresentation or misconduct by an opposing
8 party in respect of obtaining the order, that the judgment
9 itself is void, that the judgment has been satisfied,
10 released, or discharged. It is based on earlier judgment
11 that has been reversed or vacated or applying it
12 prospectively is no longer equitable, or seeks any other
13 reason that justifies relief. Again, none of those factors
14 is laid out or supported here to sustain the high burden of
15 a Rule 60 motion. See generally *In Re Terrestar Corp*, 2016
16 WL 197621 at Page 3 (Bankruptcy SDNY January 15, 2016) and
17 the cases cited therein.

18 So I will ask Ms. Knudson to email an order --
19 separate orders, on both of these motions denying the relief
20 requested.

21 MS. KNUDSON: Thank you, Your Honor, will do so.

22 THE COURT: Okay. Thank you.

23 MR. HUEBNER: Your Honor, that brings us to the
24 uncontested portion of the agenda as I alluded to briefly at
25 the beginning. I'm happy to report that the fee examiner

1 has reached resolutions on everything on this part of the
2 agenda. There are two different subgroups. On is, in
3 essence, the holdbacks for the quarterly fee applications
4 that has been in the quarterly period through must of 2021.
5 The second is an application for Reed Smith, which began the
6 case as an ordinary course professional, but because, as the
7 Court knows, insurance matters are very material and a very
8 serious asset of the estate, they exceeded the ordinary
9 course caps and therefore, pursuant to the procedures
10 approved by the Court over two years ago, we needed to move
11 separately for the payments in excess of the cap. There as
12 well, the fee examiner essentially treated that application
13 as one that required review, went through it, you know,
14 raised questions, as I think he did with all professionals,
15 and ultimately reached an accommodation as we had done on
16 each of the prior quarterly holdback hearings.

17 Davis Polk is pretty much done and I think the
18 Court can have in an hour or two or three with a single
19 omnibus order that clearly reflects the reductions agreed to
20 and the net amounts to be paid to all of the UCC
21 professionals, MSGE professionals, Ad Hoc Committee
22 professionals and Debtor professionals as the Court, of
23 course, knows, the Debtors agreed in various settlements and
24 motions over the course of the cases to pay the fees of a
25 large subset of our Creditor world and so that's what many

1 of these applications are for, with the balance being the
2 Debtors.

3 So, unless the Court has any questions, we would
4 proposit to send that in. The one request I guess I would
5 make on behalf of everybody is that it is obviously
6 important for accounting and recognition and other purposes,
7 you know, for people to be tried to be paid well before
8 year-end for things that were well into 2021. So, the Court
9 would be able to potentially enter the order if that meets
10 the Court's please and the Court has no further question,
11 that would obviously facilitate that result, especially in
12 the upcoming holiday season, you know, vacations and the
13 like on the client's side.

14 THE COURT: Okay. I do have a couple of
15 questions. First, when you say that each of these
16 applications reflects the -- or the relief being sought in
17 respect to each of these applications reflects agreements
18 between the applicant the fee examiner, or the review of the
19 fee examiner, are those agreements already in the
20 applications or are there further adjustments from what was
21 in the applications?

22 MR. HUEBNER: Apologizes, Your Honor, if I was not
23 clear. Those are not yet visible to the Court. Those are
24 agreements that were reached in the last several days as the
25 fee examiner has been working through them furiously to, you

1 know, finish out his conversations with each professional.
2 So, as I think as has been the case each quarter, we'll have
3 an omnibus order that shows the amount of reduction for each
4 firm off of the applications that are presently in front of
5 the Court. So, while many firms, certainly Davis Polk
6 included, took material voluntary sort of self-done
7 reductions prior to even filing the applications, there are
8 further reductions agreed to with the fee examiner that
9 would be reflected in the omnibus grid order that we would
10 submit to the Court later today.

11 THE COURT: Okay. All right. I have some
12 specific questions too and I may need to hear from the fee
13 examiner or his counsel on this as to whether those issues
14 were taken into account in the negotiations or that led up
15 to the agreed reductions.

16 So I'll go through those first and then I have a
17 couple of other observations to make.

18 First, the Jones Day applications, which is
19 primarily IP and patent litigation, there's a fairly large
20 expense, over \$87,000, for "consultant fees." I don't
21 really have any background or support for what that is and I
22 don't know whether the fee examiner looked at that and was
23 satisfied that that was an appropriate expense.

24 MR. KLAUDER: Good morning, Your Honor. David
25 Klauder, the fee examiner. Can you hear me okay?

1 THE COURT: Yes.

2 MR. KLAUDER: Good morning. A pleasure to be in
3 front of you. That was a specific expense that we asked for
4 and requested backup for and Jones Day did provide us the
5 invoice and the explanations with respect to that. My
6 understanding is that's a consultant related to some IP work
7 they were doing. So we did get the specific backup for
8 that.

9 THE COURT: Okay. And you were satisfied that was
10 a legitimate expense?

11 MR. KLAUDER: Yes.

12 THE COURT: Okay. I had a somewhat similar
13 question about an expense on the Skadden Arps application,
14 \$120,000 expense for "secondment" of Skadden attorney. Did
15 you look at that one?

16 MR. KLAUDER: We did look at that one. That
17 actually has come up in previous applications and I can
18 leave it to Skadden to sort of explain what that is if Your
19 Honor is looking for a little bit more explanation. We did
20 ask for backup and we did get the backup and we were
21 satisfied with the backup and the explanation for that
22 expense.

23 THE COURT: Well I think I do need to understand.
24 I have no idea what means actually, so I should either hear
25 from you or from someone on Skadden on that one.

1 MR. CLARK: Your Honor, it's Tony Clark from
2 Skadden Arps. My understanding is that at the request of
3 the client, the Debtors, Purdue, one of our associates has
4 been on secondment assignment for longer than this interim
5 application period. I can't tell you exactly what it was,
6 but as much as six or eight months. And the agreement was
7 that we would keep him on our payroll at a much higher rate
8 and be reimbursed \$30,000 a month which does not cover all
9 of our costs for the services of that particular associate
10 who is still there.

11 THE COURT: Okay. So he's essentially working
12 full time as an inhouse legal person although still on
13 Skadden's payroll?

14 MR. CLARK: That's my understanding, yes, Your
15 Honor.

16 THE COURT: Okay. All right. Thank you. There's
17 a similar -- you can get the theme of these questions.
18 There's a similar expense item -- I'm not sure whether this
19 is -- well, on the Akin Gump application, there is a 107,000
20 plus expense billed as "Professional fees, legal." I wasn't
21 sure what that was and wanted to know whether the examiner
22 looked at that one.

23 MR. KLAUDER: Your Honor, that is something we did
24 look at and got the backup for. I'm trying to -- perhaps
25 Akin Gump can pop in to give you a little bit more

1 explanation. I'll check my records to give you some, but I
2 know we specifically requested that and received that backup
3 and were satisfied with that.

4 THE COURT: Okay.

5 MS. BRAUNER: Good morning, Your Honor. Sara
6 Brauner, Akin Gump, on behalf of the Committee. That is
7 correct. We did, in fact, provide the backup. It relates
8 exclusively to Trust Point, which is a document and
9 discovery vendor and hosting vendor that we had worked with
10 over the course of the investigation, and it relates to not
11 only document storage, but also certain machine learning to
12 conduct initial levels of document review.

13 THE COURT: Okay. All right. That's fine. Thank
14 you. And then last on these types of comments, for Gilbert,
15 there is an expense item for "Contracted Professional Fees"
16 of \$45,000 and change. Is that a similar document company
17 or is that something else? I don't know if anyone is on for
18 Gilbert or if the fee examiner's counsel can shed some light
19 on that one.

20 MR. KLAUDER: Your Honor, I'm sorry. We did --
21 I'm just pulling up my report on that. This was for a -- I
22 guess Gilbert, on behalf of the AHC, this was an expert
23 witness that the used at the confirmation hearing.

24 THE COURT: Okay.

25 MR. KLAUDER: And now that I'm looking, I did get

1 the specific invoice for that particular person, the
2 billings that were incorporated in the application and as a
3 result of that explanation and the backup, I was satisfied.

4 THE COURT: All right. So it's the expert
5 witness's fee and it's consistent with the fee agreement
6 that was disclosed by the expert witness.

7 MR. KLAUDER: Right, yes.

8 THE COURT: All right, thanks. Okay. Those are
9 my specific questions.

10 Obviously, these fee applications involve a lot of
11 professional services for a lot of money. At the same time,
12 this period in these cases was one that called for a
13 significant amount of sophisticated professional services
14 and those services were not limited to the issues in the
15 bankruptcy case, which were many, but also complex
16 representations involving the Debtors' underlying
17 businesses, which are heavily regulated and involve both
18 past and present regulatory issues as well as intellectual
19 property and patent-related services.

20 The standard for reviewing fee applications is
21 largely set forth in Section 330 of the Code and is then the
22 subject of a fair amount of case law as well, which focuses
23 largely on Congress's decision to provide for compensation
24 in bankruptcy cases based on the value of the professional
25 services in the market, so that if the retention has been

1 authorized by the Court with prior disclosure of the
2 professional's compensation, one generally presumes that the
3 staffing and other practical decisions made by those
4 professionals have been made in good faith in view of the
5 attorney's legal and ethical responsibilities.

6 However, just as the market has competitive
7 pricing considerations that force non-bankruptcy
8 professionals to review their bills for charges that should
9 be reduced, the state compensated professionals need to
10 exercise billing judgment and if they've not done so, the
11 Court should do so when reviewing their fee applications.

12 In doing that, and given the experience of
13 bankruptcy courts in reviewing many fee applications, which
14 is recognized by the Circuits, bankruptcy courts enjoy wide
15 discretion in determining reasonable fee awards.

16 Here, in addition to my own review, it's clear
17 there has been review by the Court-appointed fee examiner.
18 What I don't have is what the actual reductions are and that
19 leaves me in a bit of a bind. I'm being asked to simply
20 accept the agreements reached with the fee examiner. Those
21 agreements may be perfectly appropriate. I have no reason
22 to think they aren't, but I have my own separate obligation
23 to review the fees.

24 On the other hand, however, these are all interim
25 applications by firms as a whole that because of their

1 expertise and quality, have the ability to pay money back if
2 for some reason I think on a final basis that should happen.
3 So weighing all of that, I will review the proposed order
4 and the proposed agreements in the context of interim
5 applications only and decide whether, even on an interim
6 basis, there should be further reductions or, instead, I
7 should enter the order.

8 As far as the case authority, in addition to
9 Section 330, I was quoting in large part from In Re Cenargo
10 International PLC, 294 BR 571 (Bankruptcy SDNY 2003) and the
11 cases cited therein.

12 So I think what I will say only here beyond what
13 I've already said is that I assume that the fee examiner if
14 focusing on these issues, but I want to make sure that that
15 is the case and fully reserve my ability, if it wasn't the
16 case, to focus on them at the time of final fee applications
17 for the whole case. They primarily go, if not exclusively,
18 to issues of potential duplication. And that flows in a
19 couple of ways. First, with the Debtors professionals, it's
20 conceivable to me that a fair amount of the work done by
21 Dechert could overlap with work undertaken by Davis Polk.
22 And I hope and trust that the fee examiner has looked into
23 that issue and confirmed satisfactorily that there were
24 clear lines of authority and communication so that
25 duplication would be avoided.

1 Secondly, I somewhat more confident on this
2 because I think it's more subject to discreet task billing,
3 but the Debtors do have at least a couple of firms, Jones
4 Day and Arnold and Porter, working intellectual property
5 matters and I want to make sure that there isn't duplication
6 of effort there.

7 It is also conceivable to me that some of the
8 Skadden work related to "bankruptcy related litigation"
9 might be unnecessarily duplicative work by either the
10 Debtors' main counsel, Davis Polk, or Dechert.

11 Similar concerns arise with respect to the law
12 firms for the Ad Hoc Committee of governmental and other
13 contingent litigation claimants' counsel. And again, my
14 focus here is avoiding unnecessary duplication.

15 And then separate from that, and yet an important
16 issue, is the need to focus on duplication within the firm.
17 For example, is it really necessary for Attorneys X, Y, and
18 Z in addition to Attorneys A, B, and C to attend the
19 confirmation hearing? These are things I assume that Mr.
20 Herner is focused on with his professionals but I'm going to
21 make sure of that, which is why I'm raising that again. And
22 obviously, it's not just limited to the confirmation, but
23 that's just an example.

24 Lastly, and again, as Mr. Huebner said, we're in a
25 bit of a holding pattern here awaiting the District Court's

1 ruling on the appeals from the confirmation order, I want to
2 focus on the following.

3 A number of the financial advisors here depending
4 on how that ruling goes, should be considering, and their
5 clients should be considering with them, whether there
6 should be a reduction of their services going forward.
7 That's primarily important for people or firms that are
8 being compensated on a monthly basis, a monthly fee basis,
9 but generally speaking, at a certain stage in a Chapter 11
10 case, while the financial professionals are really important
11 at earlier stages, their work drops off.

12 So those are my observations. I don't know if
13 anyone has anything further to say on them, but, again, my
14 inclination is in all likelihood, that I will grant these
15 applications as revised subject to my review of course of
16 the discounts that have been agreed to and importantly, the
17 reservation that all of the applications, as well as all the
18 prior applications, are subject to review at the time of
19 final fee applications.

20 MR. HUEBNER: Your Honor, it's Marshall Huebner.
21 Thank you from this end. Just two quick notes since it's
22 not really a today issue based on Your Honor's reflections.
23 One is by deciding to have the 41-witness trial that we had
24 with all of the primary witnesses going in with their direct
25 testimony by declaration, to be clear, Your Honor actually

1 saved the estate tens of millions of dollars and shortened
2 the trial by probably weeks because if we had 41 witnesses
3 each giving direct testimony, that type of work to actually
4 try to keep costs down is something that we are all keeping
5 our eye on.

6 I'm guessing we will work harder in subsequent
7 applications to make the lack of duplication and the
8 client's oversight of that yet more to the Court. For
9 example, having done this case largely full time for almost
10 four years, I'm not sure I've ever been on a single
11 conference call with Jones Day or Arnold and Porter to show
12 you how completely different the pipes are, but I know
13 that's not always visible to the Court. The same is
14 actually true in a transposed way, now that I might be on
15 calls with them, with respect to very clear divisions of
16 responsibility between firms like Dechert who are litigation
17 counsel and Davis Polk. So we will work harder to make
18 those lines more clear both to the fee examiner and to the
19 Court, but those are things that the client is very focused
20 on and actually works hard to ensure that frankly, we're not
21 ever having two people do the same thing because that's just
22 not acceptable.

23 So I just wanted to give the Court comfort that
24 these are things that the client is managing and many of us
25 have been thoughtful about and the like.

1 THE COURT: Okay. Thank you. All right, and
2 look, Mr. Herner is a very serious person, as are his
3 professionals. So I, like the US Trustee, take some real
4 comfort in that and in his review, and in addition to the
5 fact the U.S. Trustee has not raised objections to any of
6 these fee applications. So I'm really flagging issues just
7 for the future and I'll leave it at that.

8 MR. HUEBNER: Thank you, Your Honor. I assume
9 that covers the Reed Smith application as well, though style
10 has a different procedure approach, also we'll have an
11 agreed reduction.

12 THE COURT: Right. I reviewed each of the
13 applications including that one and including some of the
14 small ones like for tax services and the like. So my
15 remarks cover that.

16 MR. HUEBNER: Understood, Your Honor.

17 THE COURT: Okay. So unless there's anything
18 else, I think that concludes the hearing today.

19 MR. HUEBNER: It does, Your Honor. Nothing
20 further from the Debtors.

21 THE COURT: Thank you.

22 MR. KLAUDER: Thank you, Your Honor.

23 (Whereupon these proceedings were concluded at
24 11:07:38 AM)
25

I N D E X

RULINGS

	Page	Line
Motion: Object to payments denied	26	17
Motion: Leave to file late claim denied	36	11
Motion: Additional notice for		
Incarcerated people denied	37	19

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: December 17, 2021